

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

WP(C).No. 36764 of 2004(S)

PETITIONER:

**C.J.JURIAN,
JUNIOR ACCOUNTANT(ACP-I)
OFFICE OF THE DEPUTY DIRECTOR OF ACCOUNTS(POSTAL),
THIRUVANANTHAPURAM.**

**BY ADV. SRI.G.SASIDHARAN CHEMPAZHANTHIYIL
SRI.S.VISHNU**

RESPONDENTS:

**1. DEPUTY DIRECTOR OF ACCOUNTS,
POSTAL, THIRUVANANTHAPURAM.**

**2. DIRECTOR GENERAL,
POSTAL DEPARTMENT, NEW DELHI.**

**3. UNION OF INDIA,
REP. BY ITS SECRETARY, MINISTRY OF PERSONNEL,
PUBLIC GRIEVANCES AND PENSION
(DEPARTMENT OF PERSONNEL & TRAINING),
NEW DELHI.**

BY ADV. SRI.P.PARAMESWARAN NAIR,ASST.SOLICITOR

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C) NO.36764/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE O.A. NO.1090/01 DT. 12.12.01 FILED BY THE CAT, ERNAKULAM BENCH.

EXT.P2:- COPY OF THE MEMORANDUM NO.35034/1/97-ESTT(D) DT. 9.8.99 OF THE 3RD RESPONDENT.

EXT.P3:- COPY OF THE REJOINDER FILED BEFORE THE CAT ERNAKULAM BENCH DT. 22.9.02.

EXT.P4:- COPY OF THE ORDER DT. 22.1.04. IN OA. 1090/01 OF THE CAT, ERNAKULAM BENCH.

EXT.P5:- COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS IN OA. 1090/2001 BEFORE THE CAT, ERNAKULAM BENCH.

EXT.P6:- COPY OF THE JUDGMENT IN WP(C) NO.6967/04 DT. 27.2.04 OF THE HON'BLE COURT.

EXT.P7:- COPY OF THE ORDER DT. 14.7.04 IN RA. NO.8/04 IN OA. NO.1090/01 OF THE CAT, ERNAKULAM BENCH.

EXT.R1(a):- COPY OF THE LETTER NO.12/(1)/96/PA-ADMN.I/245-260 DT. 6.9.96.

EXT.R1(b):- COPY OF THE TERMS AND CONDITIONS FOR TRANSFER UNDER RULE 38 OF P&T MANUAL VOL. IV DT. 22.11.96.

EXT.R1(c):- COPY OF THE CLARIFICATION ISSUED BY THE PERSONNEL & TRAINING UNDER U.O.NO.C-273/01/PAY-1DT. 15.11.01.

/TRUE COPY/

P.A. TO JUDGE

tss

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

Writ Petition (C) No.36764 of 2004-S

Judgment

Balakrishnan Nair, J.

The petitioner, while working as Junior Accountant, was promoted as Senior Accountant by order dated 28.06.1989 with retrospective effect from 25.07.1985 and placed in the scale of pay of Rs.5000-8000. He continued in that post upto 10.12.1996. On 10.12.1996, his request for reversion as Junior Accountant in the scale of pay of Rs.4000-6000 to facilitate his transfer to Kerala was allowed. He joined the post of Junior Accountant on 13.12.1996 and by the very same order, he was transferred to Kerala.

2. On his joining duty in the post of Junior Accountant, his salary was fixed at Rs.5900/- in the scale of pay of Rs.4000-6000. Later, he was promoted under the Assured Career Progression Scheme (ACP) as per Annexure A3 order dated 09.08.1999. On his promotion, he was placed in the scale of pay of Rs.5000-8000, which is the scale of pay of Senior Accountant. As per the ACP scheme, the pay was liable to be fixed under FR 22(I)(a)(1) on option. As per order dated 27.04.2000, his pay was fixed at Rs.6350/- in the scale of pay of Rs.5000-8000. According to the petitioner, his pay should have been fixed at

the stage of Rs.7100/-. So, he filed a representation on 22.09.2000, claiming the benefit of the proviso to Rule 22. He was informed that his claim is referred for clarification to the Central Government. Feeling aggrieved by the delay in taking a decision on his claim, he filed OA No.691/01 before the CAT. The said OA was disposed of directing the Central Government to issue the necessary clarification and the competent authority to take a decision on the claim of the petitioner for fixation of his pay at Rs.7100/-. Later, his claim was rejected by order dated 06.12.2001, relying on the clarification issued by the Central Government. The petitioner challenged the aforementioned orders by filing OA No.1090/01, a copy of which is produced as Ext.P1. The order dated 27.04.2000, fixing his pay at Rs.6350/- is Annexure A4. The order, rejecting his claim is Annexure A9 and the clarification issued by the Government is Annexure A10, annexed to Ext.P1. The Tribunal, by Ext.P4, dismissed the OA. The petitioner filed Writ Petition (C) No.6967/04, challenging the said order. Later, it was withdrawn with liberty to move the CAT in review. Review Application No.8/2004 filed by the petitioner before the CAT was dismissed by Ext.P7. This Writ Petition is filed, challenging Exts.P4 and P7 and also seeking consequential reliefs.

3. The respondents have filed a counter affidavit resisting the prayers in the Writ Petition. We heard the learned counsel on both sides. The learned counsel for the petitioner submitted that his case is covered by the proviso to Rule 22, which is given after Clause (b) of Sub-rule (1) of Rule 22.

4. The main grievance of the petitioner is that the claim of the petitioner under the above said proviso was not considered by the competent authority or by the CAT. The relevant proviso relied on by the petitioner reads as follows :

“(b) If the conditions prescribed in Clause (a) are not fulfilled, he shall draw as initial pay, on the minimum of the time scale.

Provided that both in cases covered by Clause (a) and in cases, other than the cases of re-employment after resignation or removal or dismissal from the public service, covered by Clause (b), if he -

(1) has previously held substantively or officiated in

(i) the same post, or

(ii) a permanent or temporary post on the same time-scale, or

(iii) a permanent post or a temporary post (including a post in a body, incorporated or not, which is wholly or substantially owned or controlled by the Government) on an identical time-scale”.

The petitioner was a person, promoted to the post of Senior Accountant from

the post of Junior Accountant in the Madhya Pradesh unit. He got reversion to the lower post of Junior Accountant and got transferred to Kerala unit. From the Kerala unit, he was never promoted to the higher post of Senior Accountant. We feel that the benefit of the aforementioned proviso will be applicable only to persons who were promoted from Kerala unit and later faced reversion. In this case, the petitioner got reversion on his own request in the Madhya Pradesh unit and got transferred to Kerala and joined the entry cadre. Therefore, he cannot claim the benefit of working in the higher post in Madhya Pradesh, for the purpose of fixation of pay in the Kerala unit. So, the petitioner does not have a case on merits. The technical contention raised by him that the point raised by him was not properly considered by the authorities below and therefore, the matter should be remitted, cannot be accepted. In the result, the Writ Petition fails and it is dismissed.

K.BALAKRISHNAN NAIR,JUDGE

23.10.2007

T.R.RAMACHANDRAN NAIR, JUDGE

sta

